

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MISTY WHITE, *et al.*,

On behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

[1] HON. PAUL HESSE, in his official
capacity as Chief Judge of the 26th Judicial
District, and

[2] HON. KHRISTIAN STRUBHAR, in her
official capacity as Special Judge in the
Canadian County District Court,

Defendants.

Case No. 5:19-cv-1145-JD

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs submit notice of *Farella v. Anglin*, No. 5:22-cv-5121, 2023 WL 5005384 (W.D. Ark. Aug. 5, 2023) (Ex. 1), as supplemental authority directly relevant to issues raised in the pending motion to dismiss. LCvR7.1(m).

Farella concerns prospective claims against an Arkansas judge for failure to provide counsel at initial bail hearings. The ruling is relevant to three propositions in Plaintiffs' brief opposing the pending motion to dismiss (ECF No. 68):

Sovereign Immunity Does Not Apply (ECF No. 68 at 7–8). *Farella* holds that the right to counsel claim against the judge falls within the *Ex parte Young* exception to

sovereign immunity, because the judge has “‘some connection’ to the allegedly unconstitutional policy and practice.” *Farella*, 2023 WL 5005384 at *9.

***Younger* Abstention Does Not Apply** (ECF No. 68 at 8). *Farella* holds that *Younger* abstention does not apply because requiring the judge to provide counsel would not enjoin a state prosecution, nor would it require day-to-day monitoring of state courts. *Farella*, 2023 WL 5005384 at *13.

Plaintiffs Have Alleged a Sixth Amendment Right to Counsel Violation (ECF No. 68 at 18–23). *Farella* holds that the initial bail hearing is a critical stage of prosecution requiring counsel under the Sixth Amendment, because “[t]he initial bail determination risks substantial prejudice to the defendant” and “[t]he benefits of legal assistance are obvious.” *Id.* at *14–17.

Respectfully Submitted,

/s/ Trisha Trigilio
Trisha Trigilio*
Texas State Bar Number: 24075179
Brandon J. Buskey*
Alabama Bar Number: ASB2753-A50B
American Civil Liberties Union
Foundation, Criminal Law Reform
Project
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
trishat@aclu.org
bbuskey@aclu.org

/s/ Aaron Lewis
Aaron Lewis*
California Bar Number: 284244
Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067-4643
(424) 332-4800
alewis@cov.com

Laura Beth Cohen*
Michigan Bar Number: P83111
Covington & Burling LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20001-4656
(202) 662-6000
lcohen@cov.com

/s/ Megan Lambert

Megan Lambert
Oklahoma Bar Number: 33216
Ryan Kiesel
Oklahoma Bar Number: 21254
Michael Redman
Oklahoma Bar Number: 13340
American Civil Liberties Union of
Oklahoma Foundation
P.O. Box 13327
Oklahoma City, OK 73113
(405) 525-3831
mlambert@acluok.org
rkiesel@acluok.org
mredman@acluok.org

/s/ Blake Johnson

Blake Johnson
Oklahoma Bar Number: 32433
Tyler Box
Oklahoma Bar Number: 31817
Weston Watts
Oklahoma Bar Number: 33299
Justin Williams
Oklahoma Bar Number: 32539
Clayburn Curtis
Oklahoma Bar Number: 30538
Overman Legal Group, PLLC
809 NW 36th St.
Oklahoma City, OK 73118
(405) 605-6718
blakejohnson@overmanlegal.com
tylerbox@overmanlegal.com
westonwatts@overmanlegal.com
justinwilliams@overmanlegal.com
claycurtis@overmanlegal.com

Attorneys for Plaintiffs

*Admitted Pro Hac Vice

/s/Zoe Brennan-Krohn*

Zoe Brennan-Krohn*
California Bar Number: 324912
American Civil Liberties Union
Foundation, Disability Rights Program
39 Drumm Street
San Francisco, CA 94111
(415) 343-0762
zbrennan-krohn@aclu.org

CERTIFICATE OF SERVICE

I certify that I will file this document via ECF, which serves the document on all counsel of record.

/s/ Trisha Trigilio

Trisha Trigilio*

Texas State Bar Number: 24075179

American Civil Liberties Union

Foundation, Criminal Law Reform
Project

125 Broad Street, 18th Floor

New York, NY 10004

(212) 549-2500

trishat@aclu.org

Exhibit 1